

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

ALHAMBRA UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2014020448

PARENTS ON BEHALF OF STUDENT,

v.

ALHAMBRA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012090186

ORDER DENYING STUDENT'S
MOTION TO QUASH SUBPOENA
DUCES TECUM

On February 6, 2014, counsel for the Alhambra Unified School District (District), served a subpoena duces tecum (SDT) on the Custodian of Records for the Frostig School (Frostig), a non-public school which Student attends. On March 3, 2014, counsel for Parents and Student (Student, sometimes Parent) filed a motion to quash the SDT. On March 6, 2014, the District filed an opposition. Also on March 6, 2014, Student filed a reply to the District's opposition.

Student bases his motion on his contentions that (1) the subpoena requested production of documents more than one month in advance of the hearing date; and (2) the Notice to Consumers was not served on Parents at least five days before the SDT was served on Frostig. Student makes no contentions regarding documents sought from Frostig or their relevance.

The District contends Student's position lacks merit as (1) the District provided Student with reasonable notice and an opportunity to be heard regarding the SDT; and (2) the compliance date of the SDT can be modified to the date of the hearing, which was continued to April 9, 2014.

APPLICABLE LAW

Special education law does not specifically address whether an SDT may be issued by an attorney or what requirements apply to issuance of an SDT, therefore OAH relies upon relevant portions of the California Code of Civil Procedure (CCP). The CCP provides that an attorney of record in an action may sign and issue a SDT. (CCP § 1985(c). The Office of Administrative Hearings (OAH) permits an attorney of record in a special education matter to sign and issue SDTs consistent with this provision.

Pursuant to the California Administrative Procedure Act, and Administrative Law Judge (ALJ) of the OAH has the authority to quash subpoena and SDTs. (Gov't Code § 11450.30(a).) This follows the principles set forth in both the Federal Rules of Civil Procedure (Rule 45(c)(3)(A)(iii)-(iv)), and the California Code of Civil Procedure (CCP § 1987.1). Accordingly, an ALJ has the authority to quash a SDT.

CCP Section 1987.1 also provides that on the court's own motion, after giving counsel notice and opportunity to be heard, may make an order quashing the SDT entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare.

DISCUSSION

On February 6, 2014, the District served the SDT on Frostig and counsel for Student. The SDT contained the Notice to Consumer. The date for production of documents was March 3, 2014, the scheduled date for hearing. Clearly, the District failed to provide Student with the Notice to Consumers five days prior to serving the SDT as noted in CCP Section 1985.3. This, however, became a moot point, when Student filed his own request for due process hearing and the matters were consolidated, thereby continuing the District's hearing to April 9, 2014.

It is noted that Frostig has at all times been willing to produce the documents requested in the SDT. Rather than simply issuing a new SDT, the District's counsel notified Frostig to produce the documents on the new hearing date of April 9, 2014. Rather than waive the defect in the initial Notice, Student chose to place form over content, rather than simply allow Frostig to produce its documents on the day of hearing.

Given the continuance of the hearing, Student has been provided reasonable advance notice of the SDT which was provided in the March 6, 2014 Notice to Consumer. No objection has been made to the content of the SDT, only the procedural defects of the SDT. Therefore, Student's request to quash the SDT is denied, and Frostig School is directed to comply with the SDT by producing the requested documents for hearing on April 9, 2014.

ORDER

1. Student's motion to quash the subpoena duces tecum served on the Frostig School is denied.

2. The date for appearance and/or production of documents requested in the District's subpoena duces tecum served on the Frostig School is continued to April 9, 2014.

DATE: March 12, 2014

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings